

PLUME NUMBER AND STATION ADDRESS	UNDISPUTED FACTS SUPPORTING DEFENDANTS' FURTHER SUPPLEMENTAL MEMORANDUM	OCWD's SUBMISSIONS	DEFENDANTS' UNDISPUTED FACTS IN RESPONSE TO OCWD's SUBMISSIONS
	ppb. (OCWD-MTBE-001-260082.) MTBE was detected at MW-15 on December 27, 1996 at a level of 140 ppb and in another testing event prior to May 6, 2000. (OCWD-MTBE-001-260084.)	¶ 21.)	to offer his "opinion as a hydrogeologist with extensive experience in remediation," he testified during his deposition that he is "not an expert in remediation," "remedial technologies," or "fate and transport analysis." (See discussion in ¶ 2 above.)
Shell #204359403 8471 Warner Ave. Huntington Beach	<p>8. The MTBE detection in well NB-TAMD on which OCWD's date is based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1D.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least August 12, 1998, at a level of 312 ppb. (See Finsten 2008 Supp. Decl., Ex. 15.)</p>	<p>8. Mr. Costley's accrual date is based solely on detections of MTBE in monitoring wells that are "on site" under even Mr. Costley's definition of that term. <i>See</i> Costley Decl., Ex. 1D. Levels of contamination reflected in the monitoring well data cited by Mr. Costley are consistent with core remedial activities at almost any site and do not by themselves indicate that MTBE has escaped remedial efforts. The most recent remediation reports for the Shell #204359403 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion, the first real hydrogeologic evidence that MTBE had escaped remediation at this site was when MTBE was detected in the production well associated with Plume 1. (Bolin Decl., ¶ 18.)</p>	<p>8. Although Mr. Bolin purports to offer his "opinion as a hydrogeologist with extensive experience in remediation," he testified during his deposition that he is "not an expert in remediation," "remedial technologies," or "fate and transport analysis." (See discussion in ¶ 2 above.)</p>
Texaco	9. The MTBE detection in	9. Mr. Costley's accrual	9. Although Mr. Bolin

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#121681 9475 Warner Ave. Fountain Valley	well NB-TAMD on which OCWD's date is based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1D.) Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least March 27, 2000, at a level of 41,000 ppb. (<i>Id.</i>)	date is based solely on detections of MTBE in monitoring wells that are "on site" under even Mr. Costley's definition of that term. <i>See</i> Costley Decl., Ex. 1D. Levels of contamination reflected in the monitoring well data cited by Mr. Costley are consistent with core remedial activities at almost any site and do not by themselves indicate that MTBE has escaped remedial efforts. The most recent remediation reports for the Texaco #121681 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion, the first real hydrogeologic evidence that MTBE had escaped was when MTBE had been detected in the production well associated with Plume 1. (Bolin Decl., ¶ 19.)	purports to offer his "opinion as a hydrogeologist with extensive experience in remediation," he testified during his deposition that he is "not an expert in remediation," "remedial technologies," or "fate and transport analysis." (See discussion in ¶ 2 above.)
Unocal #5399 9525 Warner Ave. Fountain Valley	10. The MTBE detection in well NB-TAMD on which OCWD's date is based was at 0.12 ppb. (Costley 2009 Decl. Ex. 1D.) Prior to May 6, 2000, MTBE was detected at this station in on-site monitoring wells from at least November 20, 1996, at a level of 2,000 ppb.	10. Mr. Costley's accrual date is based solely on detections of MTBE in monitoring wells that are "on site" under even Mr. Costley's definition of that term. <i>See</i> Costley Decl., Ex. 1D. Levels of contamination reflected in the monitoring well data cited by Mr. Costley are consistent with core remedial activities at	10. When deposed as the District's Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined "off-site contamination" as "[d]etections of MTBE in a well outside the boundaries of the property." (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12- 1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring

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	<p>(<i>Id.</i>; Decl. of Melanie Hanson Sartoris, March 9, 2006 ("Sartoris 2006 Decl.") Ex. 15.)</p>	<p>almost any site and do not by themselves indicate that MTBE has escaped remedial efforts. The most recent remediation reports for the Unocal #5399 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion, the first real hydrogeologic evidence that MTBE had escaped was when MTBE had been detected in the production well associated with Plume 1. (Bolin Decl., ¶ 22.)</p>	<p>well "near the site boundary ... indicate[s] there is off-site contamination." (<i>Id.</i> 357:4-16.)</p> <p>To justify the District's reliance on purported MTBE detections in a production well to establish its accrual date, Mr. Bolin's declaration asserts that there is no other "indicat[ion] that MTBE has escaped remedial efforts" at Unocal #5399. (Bolin 2009 Decl. ¶ 22.) However, in deposition testimony, Mr. Bolin claimed that there is a "great likelihood" that MTBE has "migrated offsite" because of "some pretty high concentrations that were detected in ... site margin wells, including MW-4, which is pretty close to the site margin...." (Bolin Dep. 2892:3-23.) Bolin also testified that the MTBE contamination had "escaped remediation" because "there was a release of MTBE that got into groundwater [and] there's been no groundwater remediation." (<i>Id.</i> 2894:8-2895:5.) Notably, Mr. Bolin did not cite detection in a production well as the basis for his conclusion that MTBE had migrated offsite. (<i>Id.</i>)</p> <p>Mr. Bolin is mistaken in claiming that there are no "further efforts to define the plume or expand the area of remediation ... underway or anticipated." (Bolin Decl. ¶</p>

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			<p>22.) Consultants and/or regulators may determine that additional monitoring wells or different remediation is necessary, often many years after the last monitoring well was drilled. Where new information developed from one or more wells at the site indicates that an adjustment to the remediation measures should be made, appropriate action can be taken. (Molla Decl. ¶¶ 3-5, Ex.1.)</p> <p>Although Mr. Bolin purports to offer his "opinion as a hydrogeologist with extensive experience in remediation," he testified during his deposition that he is "not an expert in remediation," "remedial technologies," or "fate and transport analysis." (See discussion in ¶ 2 above.)</p>

<p><u>PLUME NO.</u> <u>2</u> MCWD-3B MCWD-5 MCWD-7 IRWD-7</p>	<p>11. Plume 2 was previously addressed in the 2008 round of supplemental briefing, and Defendants' undisputed facts supporting their position regarding this plume can be found in their 56.1 statement submitted in that briefing at ¶¶ 13-19.</p>	<p>11. Defendants' prior response asserts that detections of MTBE below 1 ppb in MCWD-3B, MCWD-5, and MCWD-7 are insufficient to constitute a cognizable injury or to require the District to take action. For purposes of statute of limitations, therefore, defendants concede that the District's claims with respect to these wells and Plume 2 are not time-barred.</p> <p>2. Defendants' prior response also asserts that the District must prove that MTBE released at a Plume 2 station actually contaminated the designated wells in order to bring a claim. This argument is irrelevant for purposes of statute of limitations.</p>	
<p>Mobil #18-HDR 3195 Harbor Blvd. Costa Mesa</p>	<p>12. The MTBE detection in well MW-16B on which OCWD's date is based was at 18.5 ppb. (Costley 2009 Decl. Ex. 1A.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in eight off-site monitoring wells at levels greater than the California Secondary MCL: MW-5A, MW-5B, MW-6A, MW-7, MW-9A, MW-9B, MW-10A, and MW-10B, as follows:</p> <p>MTBE was detected in</p>	<p>12. Mr. Costley cites MW-5A, MW-5B, MW-6A, MW-7, MW-9A, MW-9B, MW-10A, and MW-10B at the Mobil #18-HDR station associated with Plume 1 as examples of where "off-site" wells showed detections of MTBE prior to May 6, 2000. <i>See</i> Costley Decl., Ex. 1A. These wells, however, do not indicate that MTBE has escaped remediation at this site. Groundwater contour maps demonstrate that the shallow groundwater flow is principally to the Southwest at this station. (Bolin Decl., Ex. 7.) MW-5A, MW-5B, and MW-6A are not downgradient</p>	<p>12. When deposed as the District's Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined "off-site contamination" as "[d]etections of MTBE in a well outside the boundaries of the property." (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well "near the site boundary... indicate[s] there is off-site contamination." (<i>Id.</i> 357:4-16.)</p> <p>Although now asserting that</p>

<p>MW-5A on February 29, 1996 at 51,000 ppb, and in 13 of the 14 subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 71,000 ppb. (EXMO_18HDR_022189; OCWD-MTBE-001-182752.) MTBE was detected in MW-5B on February 29, 1996 at 40,000 ppb, and in five subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 67,000 ppb. (EXMO_18HDR_022190-91; OCWD-MTBE-001-182753-54.) MTBE was detected in MW-6A on February 29, 1996 at 12 ppb, and in four subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 31 ppb. (EXMO_18HDR_022192; OCWD-MTBE-001-182755.) MTBE was detected in MW-7 on February 29, 1996 at 4,200 ppb, and in six subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 4,700 ppb. (EXMO_18HDR_022194; OCWD-MTBE-001-182757.) MTBE was detected in MW-9A on May 29, 1996 at 3,200 ppb, and in eleven subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 5,400</p>	<p>from the release site, and MW-9A, MW-9B, MW-10A, and MW-10B are located fairly close to the station at a maximum of 65 feet to the South-West of the station. MW-7 is located approximately 150 feet downgradient from the release, indicating ongoing efforts to characterize the plume as part of remediation. MW-16B is located 350 feet downgradient from the release site, is the furthest downgradient well from the release site and showed an MTBE detection of 18.5 ppb in 2004. The most recent remediation reports for the Mobil #18-HDR do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion as a hydrogeologist with extensive experience in remediation, this detection in MW-16B is the first real indication at this site that MTBE has escaped active remediation efforts and is threatening drinking water sources. (Bolin Decl., ¶ 24.)</p> <p>Defendants cite to several of my responses to questions during depositions to critique the monitoring wells that I selected for purposes of determining an accrual date. Remedial systems are developed over time, and monitoring wells can convey different information at different times. In responding to defendants' deposition questions I was merely observing that particular monitoring wells referenced by defendants indicated that</p>	<p>detections in wells MW-5A, MW-5B, MW-6A, MW-7, MW-9A, MW-9B, MW-10A, and MW-10B "do not indicate that MTBE has escaped remediation at this site," (Bolin 2009 Decl. ¶ 24) Mr. Bolin previously identified <i>all</i> of these wells, in addition to wells MW-15A, MW-15B, and MW-16, to support his belief that "contamination emanating from Mobil 18-HDR escaped remediation." (Bolin Dep. 1271:8-11, 1272:19-1273:22.)</p> <p>Mr. Bolin is mistaken in claiming that there are no "further efforts to define the plume or expand the area of remediation ... underway or anticipated." (Bolin Decl. ¶ 24.) The Orange County Health Care Agency recently approved further work at this station "for the purpose of determining the effectiveness of the [remediation] system." (Ortega Decl. ¶¶ 2-3, Ex. A-B.)</p> <p>Although Mr. Bolin purports to offer his "opinion as a hydrogeologist with extensive experience in remediation," he testified during his deposition that he is "not an expert in remediation," "remedial technologies," or "fate and transport analysis." (See discussion in ¶ 2 above.)</p>
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	<p>ppb. (EXMO_18HDR_022197-98; OCWD-MTBE-001-182761.) MTBE was detected in MW-9B on May 29, 1996 at 4,400 ppb, and in nine subsequent sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 6,000 ppb. (EXMO_18HDR_022199; OCWD-MTBE-001-182762.) MTBE was detected in MW-10A on February 29, 1996 at 38,000 ppb (peak level), and in twelve of the next fourteen sampling events prior to May 6, 2000 at levels above 5 ppb. (EXMO_18HDR_022200; OCWD-MTBE-001-182763.) MTBE was detected in MW-10B on February 29, 1996 at 6,300 ppb, and in thirteen of the next fourteen sampling events prior to May 6, 2000 at levels above 5 ppb, peaking at 55,000 ppb. (EXMO_18HDR_022201; OCWD-MTBE-001-182764-65.)</p> <p>In deposition testimony, David Bolin (OCWD) testified that MTBE had “escaped” remediation at this station based on off-site detections in seven of these off-site wells. (Bolin Dep. 1271:8 – 1273:22). Each of these seven off-site wells Bolin lists had MTBE detections before</p>	<p>MTBE had gone beyond the then existing remedial systems between the monitoring well and the release point. I was not addressing in my deposition statements the issue of whether there was hydrogeologic evidence of the type addressed in the accrual chart, which was used to determine both when MTBE could be said to be beyond the scope of any remediation system associated with the site and a current threat to drinking water. (Bolin Decl., ¶ 56.)</p>	
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	May 6, 2000, and dating back to 1996: MW-5A, MW-5B, MW-7, MW-9A, MW-9B, MW-10A, and MW-10B. (<i>See</i> OCWD-MTBE-001-182752-65).		
Arco #6131 3201 Harbor Blvd. Costa Mesa	<p>13. The MTBE detection in well MCWD-5 on which OCWD's accrual date is based was at 0.08 ppb. (Costley 2009 Decl. Ex. 1B.) However, under the District's accrual criteria, accrual may rest on an MTBE detection in a water production well <i>only</i> "[f]or stations where no off-site monitoring wells were installed." (Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in at least three off-site monitoring wells at levels greater than the California Secondary MCL: B-8, B-9, and B-10, as follows:</p> <p>MTBE was detected in B-8 beginning on August 22, 1996, at 170 ppb, and was detected in that monitoring well during every quarterly monitoring event through May 6, 2000. (OCWD-MTBE-001-187836-37.) MTBE was detected in B-9 beginning on August 22, 1996 at 65,000 ppb, and was detected in that</p>	<p>13. Mr. Costley cites B-8, B-9, and B-10 as examples of where "off-site" wells showed detections of MTBE prior to May 6, 2000, at this site where the District concluded there were no off-site wells, and therefore detections of MTBE in the nearest production well provided the date on which the District's cause of action accrued for releases from the station. <i>See</i> Costley Decl., Ex. 1B. B-8, B-9, and B-10, however, do not indicate that MTBE has escaped remediation at this site. Groundwater contour maps demonstrate that the shallow groundwater flow is principally to the Southwest at this station. (Bolin Decl., Ex. 6.) B-8, B-9 and B-10 are located in close proximity to the release at the station. In my opinion as a hydrogeologist with extensive experience in remediation, these wells are associated with the core remedial activities at this station. The most recent remediation reports for the Arco # 6131 site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. Therefore, the first real hydrogeologic evidence that MTBE had escaped was when MTBE was detected in a production well. (Bolin Decl., ¶ 23.)</p>	<p>13. When deposed as the District's Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined "off-site contamination" as "[d]etections of MTBE in a well outside the boundaries of the property." (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well "near the site boundary... indicate[s] there is off-site contamination." (<i>Id.</i> 357:4-16.)</p> <p>To justify the District's reliance on purported MTBE detections in a production well to establish its accrual date, Mr. Bolin's declaration asserts that "the District concluded there were no off-site wells" at ARCO #6131. (Bolin Decl. ¶ 23.) However, in notes prepared for last year's deposition, Mr. Bolin concluded that "Significant [groundwater contamination] already migrated SW, downgrad[ient], off site by ... 1998." (Bolin Dep. 616:1-20, Ex. 24 (emphasis in original).) His notes identified as among the basis for this conclusion MTBE detections in "off-site well B-9 new SW site</p>

	<p>monitoring well in ten subsequent quarterly monitoring events prior to May 6, 2000. (OCWD-MTBE-001-187837.) MTBE was detected in B-10 on February 4, 1999 at 17 ppb, and was detected in that monitoring well in two monitoring events prior to May 6, 2000. (OCWD-MTBE-001-187838.)</p>		<p>margin since 1st tested in 1996.” (Bolin Dep. Ex. 24.) Monitoring well B-9 is among the off-site monitoring wells cited by defendants as establishing a pre-May 6, 2000 accrual date for this station.</p> <p>Mr. Bolin is mistaken in claiming that there are no “further efforts to define the plume or expand the area of remediation ... underway or anticipated.” (Bolin Decl. ¶ 23.) At each stage in the remediation process, and whenever new information becomes available, BP, its consultants, and the regulators, evaluate what additional or different actions, if any may be required. (Fah Decl. ¶¶ 3-4.) When new information becomes available indicating that a modification to the remediation measures being taken at a site is called for, appropriate action will be taken at any stage in the process, even years after an initial remediation program is commenced. (<i>Id.</i> ¶¶ 4-5.) (See discussion of new remedial technology proposed in January 2009 at station ARCO # 1887, ¶ 3 above.)</p> <p>Although Mr. Bolin purports to offer his “opinion as a hydrogeologist with extensive experience in remediation,” he testified during his deposition that he is “not an expert in remediation,” “remedial technologies,” or “fate and</p>
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			transport analysis.” (See discussion in ¶ 2 above.)
Arco #3083 3470 Fairview Road Costa Mesa	14. Defendants do not dispute the facts cited by the District, and believe that this station should be dismissed from the District’s lawsuit with prejudice.	14. No response necessary.	
Mobil #18-JMY 3470 Fairview Road Costa Mesa	<p>15. The MTBE detection in well MW-15 on which OCWD’s accrual date is based was at 4.9 ppb. (Costley 2009 Decl. Ex. 1A.) This number is below the California Secondary MCL and therefore below the level at which OCWD’s claims accrued, based on its own criteria. (<i>See</i> Feb. 6, 2009, Letter from M. Axline to The Hon. Shira Scheindlin.) Moreover, every sampling event in well MW-15 before the alleged November 7, 2001 accrual date, and every sampling event after the alleged accrual date, has been non-detect for MTBE. (OCWD-MTBE-001-182420.)</p> <p>Prior to May 6, 2000, MTBE was detected at this station in five off-site wells at levels greater than the California Secondary MCL (with four wells having consistent pre-May 6, 2000 concentration levels): BH-5, MW-14, MW-17, MW-19A, and MW-</p>	<p>15. Mr. Costley sites four monitoring wells at the Mobil #18-JMY station associated with Plume 2 (BH-5, MW-14, MW-17, and MW-19) as examples of where “off-site” wells showed detections of MTBE prior to May 6, 2000. <i>See</i> Costley Decl., Ex. 1A. These wells, however, do not indicate that MTBE has escaped remediation at this site. Groundwater contour maps demonstrate that the shallow groundwater flow is principally to the Southeast to Southwest at this station. (Ex. 8.) BH-5, MW-14, MW-17, and MW-19 appear to be intended to characterize the plume for remedial purposes. BH-5, for example, is only 30 feet from the property boundary, and MW-14 is only 10 feet from the property boundary. Although MW-17 and MW-19 are further away from the property boundary, neither is downgradient from the release site and both appear to be part of characterizing the plume for the purpose of remedial efforts. MW-15, in contrast, is 155 feet downgradient from the release site, is the furthest downgradient well from the release site and showed a detection of 4.9 ppb of MTBE in 2003. The most recent</p>	<p>15. When deposed as the District’s Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined “off-site contamination” as “[d]etections of MTBE in a well outside the boundaries of the property.” (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well “near the site boundary... indicate[s] there is off-site contamination.” (<i>Id.</i> 357:4-16.)</p> <p>Although now asserting that detections in wells BH-5, MW-14, MW-17, MW-19A, and MW-19B “do not indicate that MTBE has escaped remediation at this site,” (Bolin 2009 Decl. ¶ 25), in notes prepared for last year’s deposition, Mr. Bolin concluded that “Significant MTBE and TBA groundwater contamination already migrated S[outh], downgradient, off site towards water production wells by the time groundwater capture started in 2000.... GWE contamination, including MTBE & TBA, flowed S</p>

<p>19B, as follows:</p> <p>MTBE was detected at 5.7 ppb in Well-19A on January 17, 2000, above the Secondary MCL. (OCWD-MTBE-001-182423.) MTBE was detected in BH-5 on May 3, 1994 at 13 ppb, and in all eighteen subsequent MTBE testing events prior to May 6, 2000, with a peak of 200,000 ppb on September 30, 1997. (OCWD-MTBE-001-182410.) MTBE was detected in MW-14 on September 16, 1998 at 14 ppb, and in four of the next six sampling events prior to May 6, 2000, with a peak of 29 ppb. (OCWD-MTBE-001-182419.) MTBE was detected in MW-17 on June 23, 1998 at 1,000 ppb (peak level), and in six of the next seven sampling events prior to May 6, 2000. (OCWD-MTBE-001-182421.) MTBE was detected in MW-19B on June 23, 1998 at 15 ppb (peak level), and in three subsequent sampling events prior to May 6, 2000. (OCWD-MTBE-001-182424.)</p> <p>OCWD acknowledges these pre-May 6, 2000 off-site detections. (OCWD-MTBE-001-192520 (“MTBE and TBA have been detected in off-site well BH-5 . . . since MTBE first detected in 1994”).)</p>	<p>remediation reports for this site do not indicate that further efforts to define the plume or expand the area of remediation are underway or anticipated. In my opinion as a hydrogeologist with extensive experience in remediation, this detection in MW-15 is the first real indication at this site that MTBE has escaped active remediation efforts and is threatening drinking water sources. (Bolin Decl., ¶ 25.)</p> <p>Citing to summaries prepared by me for my deposition on this station, defendants’ assert that the District “acknowledges” pre-May 6, 2000, detections of MTBE in the wells cited by Mr. Costley. (See Defendants’ Rule 56.1 Statement at ¶ 15.) This assertion misrepresents my site summary which was created solely for the purpose of preparing for my deposition as the District’s Rule 30(b)(6) witness concerning the Mobil #18-JMY station and not for purposes of determining accrual dates for this station. (Bolin Decl., ¶ 25.)</p>	<p>off site >4 yrs. Before [groundwater] capture at this site.” (Bolin Dep. 1170:12-1171:12, Ex. 70.)</p> <p>Mr. Bolin is mistaken in claiming that there are no “further efforts to define the plume or expand the area of remediation . . . underway or anticipated.” (Bolin Decl. ¶ 25.) The Orange County Health Care Agency recently wrote that detections of petroleum constituents in MW-22 “will result in additional assessment activities and/or modifications to the remediation in progress.” (Ortega Decl. ¶ 4, Ex. C.)</p> <p>Although Mr. Bolin purports to offer his “opinion as a hydrogeologist with extensive experience in remediation,” he testified during his deposition that he is “not an expert in remediation,” “remedial technologies,” or “fate and transport analysis.” (See discussion in ¶ 2 above.)</p>
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Costco 17900 Newhope St. Fountain Valley	16. Defendants do not dispute the fact cited by the District, and believe that this station should be dismissed from the District's lawsuit with prejudice.	16. No response necessary.	
<u>PLUME NO.</u> <u>3</u> OCWD-M- 10 OCWD-M- 11 OCWD-M- 45	<p>17. Plume 3 was previously addressed in the 2008 round of supplemental briefing, and Defendants' undisputed facts supporting their position regarding this plume can be found in their 56.1 statement submitted in that briefing at ¶¶ 21-28.</p> <p>The District's own interrogatory answers confirm that the May 7, 2002 MTBE detection in OCWD-M10 was not the first detection of MTBE in this well, and that in fact MTBE was first detected in OCWD-M10 on September 12, 1995, at a level of 1 ppb. (Pl.'s Second Supp. Responses to Defs.' Preliminary Interrogatories re Standing Ex. 1A, "Orange County Water District Owned Monitoring Wells" p.5.) The District acknowledged the September 12, 1995 detection in its prior L.R. 56.1 Statement. (Pl.'s 2008 L.R. 56.1 Statement ¶ 21.) MTBE was also detected in OCWD-M10 prior to May 6, 2000 on June 12 1997 at 0.51 ppb and July 7, 1997 at 0.7 ppb</p>	<p>17. Mr. Costley cites a single detection of MTBE in one of the designated wells for Plume 3, OCWD-M10, to assert that the District's claims are time-barred for these stations. <i>See</i> Costley Decl., Ex. 1C. MTBE was detected at 1 ppb in monitoring well OCWD-M10 on September 12, 1995. (Ex. 11, Plaintiff Orange County Water District's Second Supplemental Responses to Defendants Preliminary Interrogatories re Standing at Ex. 1A "Orange County Water District Owned Wells.") MTBE was not detected in this well again until September 2006. (<i>Ibid.</i>) This MTBE detection did not exceed any regulatory limits in place in 1995. Specifically, in 1991 the State of California set an Action Level of 35 ppb for MTBE, and the Action Level was the only regulatory limit for MTBE until the Secondary Maximum Contaminant Level of 5 ppb was set in 1999. The September 1995 detection of MTBE in OCWD-M10 was also below the 15 to 45 ppb range that the District understood to be the taste and odor threshold for MTBE in drinking water at the time. (Bolin Decl. ¶ 28.)</p>	<p>The District's second accrual criteria states that accrual occurs when MTBE is detected in a production well associated with the plume <i>at any level</i>. In applying this criterion to other Plumes, the District relies on purported MTBE detections that are up to 100 times lower than any existing regulatory limit (<i>i.e.</i>, California's 5 ppb secondary MCL). Thus, the District relies on purported detections of .12 ppb (Plume 1), .08 ppb (Plume 2), .13 ppb (Plume 4), .04 ppb (Plume 6) and .07 ppb (Plume 7). Its reliance on these miniscule detections rests on its assertion that "[w]hen MTBE is detected in a drinking water well . . . there is no doubt that MTBE has escaped remediation." (Pl.'s Supp. Opp'n Re Statute of Limitations (Mar. 28, 2008), at 17. Applying the same logic, the substantially larger MTBE detections in OCWD-M10 before May 6, 2000 establish accrual for purposes of the District's own criterion.</p> <p>Mr. Bolin is mistaken in his assertion that there was "a single detection of MTBE" in OCWD-M10. This claim ignores the undisputed fact that MTBE was also</p>

	(Sartoris 2006 Decl. Ex. 10, pp. 2, 4), and on February 1, 1999 at 0.61 ppb (Finsten 2009 Decl. Ex. 8.)		detected in OCWD-M10 prior to May 6, 2000 on June 12 1997 at 0.51 ppb and July 7, 1997 at 0.7 ppb (Sartoris 2006 Decl. Ex. 10, pp. 2, 4), and on February 1, 1999 at 0.61 ppb (Finsten 2009 Decl. Ex. 8.)
Arco #1912 18480 Brookhurst St. Fountain Valley	<p>18. The MTBE detection in well “W-8” on which OCWD’s accrual date is apparently based on a detection in well “MW-8” at 7.6 ppb. (Costley 2009 Decl. Ex. 1A.)</p> <p>“MW-8” was constructed in December 1995 to monitor the adjacent Beacon Bay facility. (OCWD-MTBE-001-265197.) BP assumed responsibility for testing this well in 2006, however MTBE was not discovered in this well for the first time on March 14, 2007, the date on which OCWD alleges its claims accrued. (OCWD-MTBE-001-264566.) MTBE was first detected in MW-8 on April 30, 1996 at 64.1 ppb, and was detected at 2,270 ppb in that well on August 15, 1996 (OCWD-MTBE-001-265221.) If a detection in this well triggers accrual at this station, the District’s claims at this station are time-barred.</p> <p>Furthermore, prior to May 6, 2000, MTBE</p>	<p>18. Mr. Costley cites B-5, E-7 and E-15 at the Arco #1912 station associated with Plume 3 as examples of where “off-site” wells showed detections of MTBE prior to May 6, 2000. <i>See</i> Costley Decl., Ex. 1A. These wells, however, do not indicate that MTBE has escaped remediation at this site. Groundwater flows at the Arco #1912 are considered variable because groundwater has flowed in multiple directions over time, and has changed direction several times. (Ex. 10.) B-5 is only 5 feet East of the site and, therefore, appears to be part of plume characterization for the purpose of remedial efforts. E-7 is 97 feet from the site, but is located on the property of another designated fuel release site, Thrifty #383. Based on my review of the data from Arco #1912 and Thrifty #383, the MTBE plumes originating at these two sites appear to have commingled, and E-7 MTBE detections may have originated at either or both of these sites. E-7 is located within 50 feet of and, therefore, within the influence of Thrifty’s remediation well HVE-1. For these reasons, MTBE detections at E-7 do not demonstrate that MTBE has escaped remediation. E-15 is only 20 feet from site</p>	<p>18. <i>See</i> ¶ 17 <i>supra</i> for discussion of pre-May 6, 2000 MTBE detections in OCWD-M10.</p> <p>When deposed as the District’s Rule 30(b)(6) representative last year, Mr. Bolin unequivocally defined “off-site contamination” as “[d]etections of MTBE in a well outside the boundaries of the property.” (Bolin Dep. 356:2-22; <i>see also id.</i> 1888:25-1890:3; 1933:12-1934:3.) Mr. Bolin also testified that an MTBE detection in a monitoring well “near the site boundary... indicate[s] there is off-site contamination.” (<i>Id.</i> 357:4-16.)</p> <p>Mr. Bolin does not directly respond to the undisputed fact that MW-8, the well on which he relies to support the District’s accrual date, was constructed in December 1995 and that MTBE was detected there in April 1996 at 64.1 ppb, then rising to 2,270 in August 1996. Instead, he states obliquely that: “In 2002, Arco assumed responsibility for operating and sampling MW-8 likely due to post-2000 conclusions that the MTBE in MW-8 may originated at</p>